

Internal Revenue Service

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Third Party Communication: None

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Person To Contact:

, ID No.

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Refer Reply To:

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PLR-145695-08

Date:

December 12, 2008

Legend

Acquiring =

Target =

State A =

State B =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

x =

y =

Majority Preferred Owners =

Minority Common Owner =

Court =

State A Official =

State B Official =

Dear :

We respond to your letter dated October 22, 2008, submitted on behalf of Acquiring, requesting rulings concerning the Federal income taxation of certain transactions. Additional information was submitted in letters dated November 5, November 19, and December 10, 2008. The information submitted is summarized below. All dates in this letter are within the 2008 calendar year.

Acquiring is a State A corporation that files its Federal income tax returns on a calendar year basis. Through Date 8, Acquiring was neither the common parent nor a subsidiary member of a consolidated group. Target is a State B corporation that files its Federal income tax returns on a calendar year basis. Through Date 8, Target was neither the common parent nor a subsidiary member of a consolidated group.

Prior to Date 1, Target had 2 classes of stock outstanding, Target convertible preferred stock and Target common stock. The majority of the Target convertible preferred stock was owned by Majority Preferred Owners and the remainder of the Target convertible preferred stock was owned by certain individuals who also owned Target common stock. The Target common stock was owned approximately x percent by approximately y individuals with the remaining Target common stock owned by Minority Common Owner.

During Date 1 and Date 2, Acquiring purchased all of the Target convertible preferred stock for cash. On Date 3, Acquiring, Target, and certain Target shareholders executed an Agreement and Plan of Merger (the "Merger Agreement") whereby Target would merge into Acquiring in exchange for Acquiring common stock, Acquiring notes, and cash. The merger was contingent upon, among other things, an affirmative vote by

a majority of Target's common stockholders. On Date 4, Target's stockholders approved the merger and also on Date 4, the merger was effected by filing Certificates of Merger with State A Official and State B Official. Pursuant to the Merger Agreement, all of the Target convertible preferred stock, which pursuant to the Date 1 and Date 2 purchases was held by Acquiring, was cancelled. Also on Date 4, pursuant to the Certificate of Merger filed with State A Official, Acquiring changed its name to that of Target.

Sometime in the next few months, Acquiring discovered that the merger of Target into Acquiring could yield adverse tax consequences that potentially could be devastating to the viability of Acquiring as an ongoing entity. After learning of these consequences, Acquiring, Target, and certain shareholders of Target undertook steps to rescind the merger and effect a taxable sale of the Target common stock to Acquiring. The sale of the Target convertible preferred stock between Date 1 and Date 2 was not to be rescinded.

On Date 5, Target and certain shareholders of Target filed a petition in Court seeking a judgment (a) rescinding the Merger Agreement ab initio, (b) declaring the merger void and without effect, and (c) directing State B Official to reinstate Target as a State B corporation in good standing.

On Date 6, the Court rendered its judgment (a) rescinding the Merger Agreement, (b) providing that because the Merger Agreement was void ab initio, any actions taken in reliance on that void agreement, including but not limited to the filing of the Certificate of Merger with State B Official are also void and without effect, (c) providing that without limiting the foregoing, because the Certificate of Merger was void and without effect, the merger contemplated thereby was also void and without effect, and (d) directing State B Official to reinstate Target as a State B corporation in good standing.

On Date 7, State B Official issued Target a Certificate of Good Standing. Also on Date 7, Acquiring filed a Certificate of Correction with State A Official, voiding the merger under State A law.

Therefore, as a result of the actions on Date 5, Date 6, and Date 7 (together, the "Rescission Transactions"), as described above, Target is treated, for State A and State B purposes, as remaining in existence, the Target common stockholders prior to the merger on Date 4 remain as the Target common stockholders, and Acquiring remains the owner of all the outstanding Target convertible preferred stock. Additionally, Acquiring's name reverted to its name prior to the merger on Date 4.

Lastly, pursuant to an Agreement and Plan of Acquisition between Acquiring, Target, and certain Target shareholders, Acquiring acquired all of the outstanding Target common stock on Date 8 for an amount of consideration equal to the

consideration agreed to in the Merger Agreement (subject to dissenters' rights similar to those provided in a merger).

Acquiring has made the following representations in connection with the transactions described above:

(i) At the time of completion of the Rescission Transactions, the legal and financial arrangements among Acquiring and Target and their respective shareholders were identical in all material respects to such arrangements prior to the merger.

(ii) Neither Acquiring nor Target will take any material position for U.S. Federal income tax purposes inconsistent with the position it would have taken had the merger not occurred.

(iii) There is no plan or intention to liquidate Target with or into Acquiring.

Based solely on the facts submitted and the representations made, we rule that, for Federal income tax purposes:

(1) Target will be treated as not having merged into Acquiring.

(2) Target and Acquiring will be treated as two separate corporations at all times during the 2008 taxable year.

(3) Acquiring will be treated as having acquired all of the Target common stock pursuant to the Agreement and Plan of Acquisition on Date 8.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Filiz A. Serbes
Chief, Branch 3
Office of Associate Chief Counsel (Corporate)